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A CIVIL SOCIETY MOVEMENT

Reform of Malta's Constitution: Recommendations on a Procedure for the Consideration and Approval of Amendments to the Constitution

Prepared by Repubblika

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Scope

This Memorandum puts forward Repubblika's proposals for a procedure to be adopted for Constitutional reform. This document does not make an assessment of any possible weaknesses in our present Constitution that Repubblika would like to see addressed. Nor does it provide Repubblika's recommendations on substantive changes. Those topics may be addressed in future presentations by our organisation.

We find it is important for Repubblika to make specific recommendations about procedure because of the fundamental importance of the Constitution. We do not question the authority vested in Parliament and the Members elected to it in adopting changes to the Constitution. The Constitution itself provides for the procedure for changing entrenched clauses. The fact that an act of Parliament is not deemed enough to amend these clauses suggests that the Constitution has a status of a 'basic law' which rises above the sovereignty of any institution, even Parliament.

The two-thirds threshold imposes on Parliamentarians an effort to reach consensus that is greater than any other ordinary business. It does so because the status of elected office is insufficient to give a majority the power to tinker with basic law.

The Constitution as a basic law does not merely establish the fundamental rules of the game. It also defines the limits to the powers lent to people in authority — whether elected or appointed — to ensure they have enough legal authority to fulfil their functions, but in no way to be endowed with powers they do not necessarily need to serve the community.

The Constitution also establishes the balance between the interests of the community — often expressed as the will of a majority in elections to elected office — and the fundamental rights of every individual.

That is why the majority is not allowed by our Constitution the legal power to grant itself the authority to overrule the rights of an individual even if the rights of the one stand in opposition to the interests of the many, or even of all but the one.

The two-thirds threshold, except on rare occasions has, in our polarised society, proven to be insurmountable. This is at least partly the reason why provisions in the Constitution of 1964 have not been sufficiently updated and the experience acquired since then has not sufficiently informed the development of the basic law.

We not only consider the apparent willingness of the Parliamentary parties to take an open view to seek consensus to change as a necessary element to overcome the two-third threshold. We

also see it as a positive and desirable, albeit unwitting, legacy of a moment of crisis in our country.

However Repubblika asserts that though the affirmative approval of Constitutional changes by a super-majority in our Parliament satisfies the legal obligations for such changes to occur, and as welcome and positive as as such a development could prove to be, it is insufficient for our democracy for the two larger political parties to proceed to amend the Constitution merely on the basis of such an affirmative approval.

Since provisions in the Constitution are the subject at issue here, we argue that it is perfectly legitimate to start by examining the process by which such provisions might change. If provisions that have heretofore been considered as valid components of the Constitution are now being examined for change, there is no reason to depart with the view that the Constitutional provisions that regulate its change are above improvement.

The Constitution therefore is a basic law defining the effectively unalterable rules of the game. It is a limiting barrier designed by intent to limit the power of government, particularly its elected officials and the executive branch. It acts as a guarantor to the rights of individuals who may in their singular minority be unable to influence in any way the formal process of amending that guarantee. We believe that given the exceptional nature of the Constitution cross-party consensus is but a single element that ought to be secured before one of the branches of government — Parliament — rules on its changes.

As the promoters for Constitutional change argue, rules that were considered sufficient in 1964 (or since) to meet the understanding of the time of what a democracy should look like, may no longer satisfy today's understanding of the same.

This thinking is likely to feature in support of many proposed changes. By way of example it may be considered that in 1964 it was deemed as perfectly reasonable to task the Attorney General both with the power of autonomy in matters of criminal prosecution and the responsibility to advise the executive in matters of law. It may be argued that our expectations of the standards for separation between judicial and executive functions today might justify a separation of those roles. We were not necessarily wrong in 1964 and it may not be necessarily wrong now. But today's expectations might make a case for change.

Similarly we submit that though the provision regulating changes to the Constitution may have been deemed a satisfactory safeguard in 1964, today's understanding of how a democracy should function is such that limiting democratic governance to acts of Parliament ignores the expectation that the 'rules of the game' are developed with the express and manifest inclusion of civil society.

Since we are touching upon the role of civil society in contemporary understanding of a functioning democracy, we feel we must underline again that a process that does not provide

the fullest space for the scrutiny of independent media and for the active initiative and participation of civil society, will prove to be an undemocratic process however compliant it may be within the current Constitutional framework.

This is one of the key observations of the Venice Commission that has highlighted this gross weakness of our state of affairs.

We are especially concerned by observations raised during our introductory meeting with the Steering Committee that has explicitly let us know it intends to avoid any engagement with independent media and dodge the scrutiny of journalists out of some misguided fear that the media is somehow incapable of making an interpretation of the efforts of the political parties.

We are also concerned that no specific attention is being made to that component of civil society that is specifically focused on matters of good governance, human rights and the strengthening of democracy. We hope that such an indiscriminate approach can be corrected and is not intended to dilute the influence of civil society by weakening the voice of organisations with specialist interest against a background of a multitude of organisations considerably less focused on public affairs.

This Memorandum does not propose to abolish or replace the procedures described to Repubblika as having been adopted by the Steering Committee in our meeting at the residence of the President of Malta on 18 February 2019. Rather we seek to propose ways according to which those procedures would be augmented in order to ensure that quite apart from seeking each other's buy-in of the changes proposed, the larger political parties also secure the buy-in of civil society as a pillar of democratic action which complements, but does not seek to replace or in any way challenge, the supremacy of Parliament.

Naturally a more detailed and more structured decision-making process increases the administrative burden and the operational cost. We do not think it should be controversial however that a country that comes up on a major review of its Constitutional framework almost 6 decades from its design will want to allocate the appropriate resources to conduct a process that will stand the test of time.

It will also want to make sure it does not risk compromising further the sustainability of its democratic framework out of some misguided notions of austerity.

We therefore argue that the country must embark on a careful, conscious and well-informed process of reform armed with all the right tools to ensure the broadest level of shared commitment and ownership in all levels of the community.

Case Studies

Within the body of the text of this document we have included insets with brief notes from Case Studies of other constitutional reform initiatives in other countries.

The notes are by no means exhaustive nor are they the product of original research. We have included them in order to indicate the sources of inspiration for some of the ideas contained in this document whether as negative experiences and warnings of error or as successful best practice model.

We certainly consider that there is no single experience, however successful, that can be taken out of the context of the history, the political culture and the persons concerned and grafted onto another context whilst expecting identical results.

However patterns do emerge that we find highly significant.

In principle constitutional initiatives that are the product of closed-door negotiations between political leaders and incumbents, whatever their stated objective might be, achieve a consolidation of influence and control by the power holders.

This is especially the case in a context of populist fervour where political leaders exploit plebiscites to secure their hold on power on the flimsy legitimacy of momentary popular support.

We have seen signs in the local context that are remarkably indicative of this approach and we would warn against a Constitutional reform that concentrates power further when the central challenge of our current set up -- as correctly articulated by the Venice Commission -- is indeed the excessive concentration of power in the Chief Executive.

Another historical pattern is that bottom-up initiatives that drive Constitutional change tend to follow political convulsion or a traumatic event. We cite for example the Icelandic process that followed immediately the 2008 crisis. However this is not a new pattern and the post-war Constitution of Italy and the Constitutional initiatives that followed the American War of Independence and the French Revolution in its multiple stages up to 1871 are also the products of post-traumatic nation-building.

Contrary to the experience of Slovakia which, after the assassination of Jan Kuciak, a grassroots movement has mobilised and continues to exert meaningful pressure for change, Malta's experience after the assassination of Daphne Caruana Galizia has been considerably less eventful.

However the assassination of a journalist whose central mission in life was to expose and document the institutional failures the present reform ostensibly wishes to address, ought to be by any definition of normality a crystallised moment of crisis for a democracy.

On the surface the present reform process is galvanised by the killing of Daphne Caruana Galizia. None of the issues of substance being presently discussed are new or newly discovered. All members of the Steering Committee have on various occasions and with varying degrees of emphasis at one point or other acknowledged the need for reform.

Why embark on an earnest program of reforms now?

Again on the surface the historical steps we have witnessed are that following the assassination of Daphne Caruana Galizia, the Parliamentary Assembly of the Council of Europe appointed a rapporteur to investigate the context of the assassination. Both the proposal for the appointment of a rapporteur and the identity of the chosen rapporteur where objected to by the government.

When reporting to the Justice committee of the Parliamentary Assembly of the Council of Europe, the rapporteur, Pietr Omtzigt, recommended that the Council seeks the advice of the Venice Commission on the state of affairs in Malta after finding in his mission that there appear to be Constitutional and institutional weaknesses that cannot be ignored if the assassination of a journalist in Malta is to be understood.

After this request the government also requested the Venice Commission to conduct its review.

On its conclusion both the government and the opposition welcomed the Venice Commission's findings and a near defunct initiative (that had been in place since 2013) by the government to consider Constitutional revisions was revived.

On the surface therefore the national trauma that the country should have experienced when its democracy had reached a critical point where a journalist could be assassinated because of her work should be the catalyst for the present reform process.

But immediately beneath the surface, it is clear to us that this is not the case at all.

Under the cover of these events, the two political parties have embarked on what so far has been a behind the scenes exercise. We hear no discourse on what the ambitions are and we are not presented with any wide-eyed aspirations for an improved democracy.

Quite the contrary in our meeting with the Steering Committee we had the impression that the participants have no particular vision for the outcome of the exercise beyond having merely done 'something'.

We also have seen no evidence of any significant and meaningful thought about the process of change, public engagement and a clear definition of the restraint of present power holders to allow citizens to lead a process of reform according to their ambitions for an improved democracy.

We would therefore strongly recommend that more time is spent on studying experiences of other countries that have conducted Constitutional reform and the extent to which these processes teach us lessons on the path ahead of us.

In the short time that we have had to prepare these recommendations we have consulted studies by Democracy Reporting International on the cases of Indonesia and South Africa, the opinion by the Venice Commission on Romania's case and the invaluable comparative research by Professor Robert Blackburn for the UK Parliament Committee on Constitutional Change.

Brief notes from these studies are incorporated in insets in the present document.

Structure

This Memorandum makes recommendations on the following matters that we feel are interrelated and interdependent:

1. Principles guiding the process of reform
2. Identification of actors that have a role in the process to reform
3. Procedures to secure consensus on reform
4. Recommendations on community engagement
5. Recommendations on a legislative framework for the process of reform

1. Principles guiding the process of reform

The following is not a list of Constitutional principles. Therefore we are not seeking at this stage to examine the adequacy of principles that are already in the Constitution and whether we would like any of these to be altered.

The following is rather a list of principles we feel should be kept in mind by all actors in *how* the reform should be conducted rather than in *what* the reform actually seeks to change.

I. The Constitution is to be amended, not replaced

The Constitution in its current form is an imperfect safeguard for community interest and individual rights. Although it is commonplace to remind that there is no such thing as a perfect constitution, we do feel it is important to recall that it is more desirable to retain the existing imperfections than to add worse ones.

We submit that if ultimately sufficient buy-in for changes is not secured, it would be better to shelf changes to the Constitution until the views of the community change, than to seek to push changes through so as not to appear to have failed in completing a reform process.

The point of departure of any discussion should therefore be that we do have a Constitution and until this community is broadly comfortable with making changes to it, we remain as a community loyal to the Constitution we have.

The inference from that is that any notion of a fresh charter that replaces the existing Constitution wholesale is a dangerous leap that is akin to the colonial constitutions imposed on this country without its people's consent.

As we argue elsewhere, even consensus between the two large political parties for an abrogative and replacement process is insufficient to risk such a wholesale change without jeopardising the very stability of our democracy.

II. Changes to the Constitution are to be phased in thematic sectors, not adopted as a package

Whether because of the need to allow citizens the time to absorb issues in order to be able to express an informed view on them or because institutions need to take on changes at a rate

that does not weaken their stability and their effectiveness, it is undesirable for a package of unrelated reforms to be moved in one fell swoop.

This principle is tempered by another principle listed hereunder that changes in different parts of the Constitution that in isolation would create a failure of equilibrium that can only be rebalanced by other changes must be implemented together.

This Principle II takes the view that a meaningful reform in the composition of the Electoral Commission, say, ought not to be jumbled with a reform on the functions of the President. The danger of such an intermingling of loosely associated amendments is the loss of focus on matters that at face value might be deemed of secondary importance in relation to more obviously engaging or controversial topics, but in reality deserve attention and due consideration.

However, no element in the Constitution is trivial and no change is without a significant risk of changes being made without widespread informed and conscious consent.

At the risk of attributing bad faith where there may be none, shuffling unrelated reforms allows significant changes to be adopted by stealth.

Finally, agreement with a portion of the reforms proposed should not necessarily be construed to signify agreement with all of them and the actors involved should have every opportunity to review and grant or withhold their consent to Constitutional changes without being asked to commit to some form of package.

CASE STUDY: Switzerland

The adoption of the Constitution of 1999 is the result of a lengthy process which lasted over three decades. Two main stages need to be distinguished. During the first stage (1965-1985), the aim was to draft a new constitution which would include important substantive reforms. As the proposed changes met with strong skepticism, the government decided to change strategy and to achieve constitutional reform through different “building blocks”: during the second stage (1985-1999), the drafting process focused on three “building blocks” of the Swiss constitutional order, the idea being that further reforms would be undertaken later on.

The *first* and major building block consisted in updating the text of the Swiss federal Constitution of 1848/74. Compared with drafts of a new constitution proposed during the first stage, the aims pursued were much more modest. The new text was not aimed at including any substantive reforms. It was meant to codify unwritten constitutional principles and rights, to eliminate patently outdated provisions, to provide for a coherent structure of the new constitutional text and to modernize and harmonize the language. Harmonization was deemed necessary, as the old constitution contained, due to the frequent piecemeal amendments, provisions which differed in terms of depth and style. The overall aim was to increase the transparency and accessibility of the Constitution for the ordinary citizen and to provide for a solid foundation for future reforms.

The *second* building block consisted in a package aimed at reforming direct democracy.

The *third* building block was a reform package of the judiciary.

The adoption of the constitutional reforms outlined above did not put an end to constitutional reform. Two important reforms, one on (fiscal) federalism, and the second on education policy, were approved in 2004 and 2006 respectively.

III. Changes that in isolation could increase the powers of the Executive should be adopted together with changes that curtail them

The risk of a phased approach to Constitutional reform is that the process stops midstream at a point after the adoption of changes that might retain or enhance the powers and authority of the executive branch and before any mitigating initiatives are adopted separately.

This risk is to be managed by tying together reforms that in their aggregate ensure the proper balance and limitation of power of the executive and providing that any component change is only executed if and if only if the remainder of the change is adopted.

IV. The process of design is to be transparent

The Constitution is the basis of claims made by individuals against their government. As such therefore it is a tool used in disputes where at departure the two parties involved are of extremely unequal resources and influence.

The Courts rely on the Constitution to provide them the guidance to ensure this inequality is levelled and thus justice is served. By its very nature the process of decision by a Constitutional Court is a process of interpreting not only what the Constitution says but also what it intends.

It would therefore be helpful if the rationality at the stage of design of Constitutional provisions is recorded. Since consensus for reform between delegations of the two sides of Parliament must necessarily be sought before a Bill is published and debated, records of the Parliamentary debates will be insufficient guides to illustrate the intention of the authors as any dialectic debate that could crystallise even in its objections the intent of design would have occurred outside Parliament.

It is therefore desirable for all debate in the existing and proposed structures for the reform to be streamed live for public review and recorded.

CASE STUDY: Ireland

Submissions to the Irish Constitutional Convention were made online, and all were published. In order further to engage the public with its work, all public sessions of the Convention were live-streamed on its website. The Convention took additional steps to encourage contributions from the public for its work on the right to vote for citizens living outside the State in Presidential elections. An online questionnaire aimed at Irish citizens resident outside the State was available to complete between 22 August and 18 September 2013, and was extremely successful: the Convention received a 'huge response' consisting of 'thousands of replies' from Irish citizens resident in 64 countries around the world.

The Convention's online presence, designed to inform the public about its work and to facilitate public engagement with the constitutional reform process, was notable. The Convention's website went live on the day of its inaugural meeting, and active Facebook and twitter accounts were maintained. Further, the Convention made available all 'Convention documents' on its website, all submissions were published online, and all public meetings – amounting to around 100 hours of footage - were live-streamed.

These measures proved effective as means of encouraging public participation and engagement with the Convention's work: the Convention received 2,500 submissions and its website was visited 350,000 times from 144 countries. Maintaining an active and frequently updated online presence can only have contributed to ensuring that accessible and accurate information about the Convention's work was available to the public. This accessibility helps reinforce the message that the Convention's procedures were intended to be open and transparent, and that the Convention welcomed input from anyone affected by or interested in the constitutional issues being discussed.

CASE STUDY: Romania

In 2013, a Forum Constitutional was set up to provide a formalised structure to engage civil society in the constitutional reform process. It was to run in parallel with the government-led Romanian Commission for the Revision of the Constitution. The theory seemed promising but in practice, the Commission was roundly accused of lacking transparency and of ignoring the findings of the Forum meaning that civic participation was in name only with the Venice Commission subsequently stating that "following some initial positive steps indicating an option for an open and transparent approach, the revision process was lead in a less inclusive manner and did not entirely benefit of the timeframe available and the potential input of the various circles having shown interest, in the Romanian society, for the revision of the Constitution." It has since been opined that this attempt at reform was an example of populist-majoritarian constitutional reform ie. a political elite attempting to impose a non-consensual view onto a society via a supermajority.

V. Any proposed change must be considered on the basis of reasons for and against its adoption

Cross-party consensus, though both necessary and desirable for constitutional reform, carries the risk of losing the necessary dialectic that could present alternative solutions or even the relative desirability of not making the change at all.

It must therefore be ensured that even if — indeed especially if — there is agreement between the two major political parties in support of a Constitutional amendment, clear and equal space is given in the public discourse for contrasting argument in opposition to that amendment.

VI. Constitutional reform is not time barred

It is understandable that especially considering past failures to secure cross-party consensus for reform, political parties might feel they need to ‘seize the moment’ and exploit a moment of crisis or a thaw in their mutual relationships to rush through changes.

Reform must be based on the principle that the rarity and narrowness of a present window of opportunity ought not to be a consideration for the rate, quality and process of change and certainly not a consideration that in any way overrides the other principles listed here.

2. Actors with a role in the process of reform

I. Parliament

The Constitution itself provides that changes to it must be done by Act of Parliament. It is therefore obvious that Parliamentarians are key actors in the process of reform as their affirmative act of approval is a definitive requirement to put in place any change.

Although for practical purposes Parliamentarians organise themselves in political parties and although for practical purposes it makes sense for political parties to mobilise delegations that represent them in informal extra-Parliamentary discussions on Constitutional matters, the two-thirds requirement in the Constitution does require that the normal standards of decisions of a workable majority are insufficient where changes to the Constitution are concerned.

This means that even within the notion of the exercise of a Parliamentary function in the case of Constitutional reform, the normal workings of 'Government' and 'Opposition' groups are an insufficient level of engagement.

Firstly, there is clearly a distinct role for all Parliamentary parties or Independent Members of Parliament that cannot be subsumed by delegations of the main government and opposition parties. The present Parliament includes the Partit Demokratiku, who, although a component of the Constitutional Opposition should have a role as a distinct actor which is more substantive than that of political parties that are not in Parliament.

Secondly, we would submit that the equivalency between the Parliamentary Majority and the Executive is in and of itself a defect of our Constitutional makeup that cannot be addressed if the views of one and the other are considered as one. 'Backbenchers' have a crucial role in the debate and their views should be considered independently of the Groups they belong to.

Thirdly, as guardian of Parliamentary liberties and rising above the narrow interests of political parties in Parliament, the Speaker is a distinct stakeholder and should be an actor that can be expected to provide leadership and a guarantee of a distinction in the logic of interests of the legislative and executive branches.

CASE STUDY: Belgium

The Belgian constitutional reform of 1993 was not an abstract constitutional exercise but a political act, controlled by an elite of senior politicians and engineered by cross- party negotiation and compromise. However, the need to preserve the fragile agreement that had been reached between the coalition partners meant that the government was unwilling to accept any

changes or amendments to the *accords*. As a result, although the *accords* were subject to the parliamentary process, the legislature was effectively required to accept or reject the reforms as a whole. This approach antagonised the opposition parties, and further reinforced the perception that this constitutional reform was the preserve of a very small group of politicians, a pre-arranged package of measures that was not subject to full scrutiny by the democratically elected branch of government.

II. Political parties

No doubt political parties are agents of change in our community and key actors in a process of Constitutional reform. It is also understood that reaching consensus for reform will require inter-party negotiations between the two political parties that alone and only together can secure sufficient legislative muscle to see through reforms.

Political parties that command influence in Parliament at present may be doing so because the existing Constitutional framework favours the incumbents in a way that a more relevant understanding of democratic expectations today might not afford them.

It is therefore imperative that political parties that are in Parliament are deemed as actors in the process of reform.

III. Institutions

As with the Speaker of Parliament and his role as an actor in arguing, as it were, in the interests of the legislative institution independently of the interests of the executive which often subsumes it, other institutions that are at present effectively submitted to the power of the executive branch should participate as autonomous actors.

These institutions would obviously include the judiciary.

But perhaps less obviously, a Constitutional reform procedure must take into account other institutions wrongfully deemed as lesser elements of democratic life. It would be misguided to assume that the civil service, regulatory bodies, Local Councils, Constitutional bodies and so on do not have a distinct view on Constitutional reform as the Constitution should define their role in the workings of our community, it should assert and ring-fence their powers and it should define their autonomy from other institutional actors.

Also practitioners within these entities are endowed with the experience of the workings of these bodies and can make a valid contribution that should not be filtered or mediated by the Executive that wrongly but altogether frequently acts as if it can decide on their behalf.

IV. Constituted bodies

The Executive is obliged under ordinary legislation to listen to and take adequate account of the views of organisations ordinarily collectively described as 'social partners' in matters concerning the governance of the economy. The Malta Council for Economic and Social Development groups organisations in a forum of people who are recognised as stakeholders in the management of Malta's economy and seeks to balance their contrasting considerations or, when those considerations converge to seek convergence with public policy.

There is no reason to think that organisations that are stakeholders in the conduct of the country's economy would hold any less significant stake in the country's Constitution.

V. Non-governmental sector

The non-governmental sector is the locus of community life and is by its very nature a stakeholder in any reform of the basic law that governs it.

The fragmentation of interests may make the engagement of this sector unwieldy as most organisations would only be able to focus their limited resources near exclusively to the fulfilment of their narrow functions and might therefore find engagement in a process of constitutional reform as existing outside their scope or at best beyond the time and effort they can put into it.

By way of example sports clubs are indeed a key element of community life but activists in the sector might find a debate on the functions of Malta's President as something that as an organisation they do not have the resources or even the statutory remit to reach a position on.

It is therefore crucial to harness the engagement of the non-governmental sector in a way that is meaningful to its participants and in a way that gives a productive contribution to the reform process.

It is also important to take a broad view of the non-governmental sector in view of the following partial list of considerations that may provide a different insight today than when the Constitution was first written:

a. Organisations representing sectors of society that require to be organised to ensure their interests are adequately protected or equally treated such as women, students, persons with disability, LGBTIQ and so on.

b. Organisations that argue for the conservation of the environment, the protection of habitats, combating climate change, the preservation of artificial heritage, etc.
c. Artists.
d. Organisations that represent churches, religious denominations and humanists or atheists.
e. Organisations that represent professionals or persons who in the exercise of their vocation are engaged by their clients on the basis of trust.
f. Organisations that work with or on behalf of the poor, the disenfranchised, imprisoned or detained persons, the socially disadvantaged, the homeless and so on.
g. Organisations that work with or represent the interests of immigrants or their descendants.
h. The independent media.
i. Organisations that focus on matters of public governance, fundamental rights and the rule of law.

VI. Experts

Constitutional reform is a complex and technical matter with ramifications that can only be adequately explained with a profound understanding of legal and political theory, comparative analysis and historical experience.

It is therefore crucial that all other actors are given the benefit of the expert knowledge and experience of theoreticians and practitioners that are best placed to advise on reform.

VII. Citizens

Although Parliament is elected directly by the choice and free vote exercised by citizens, that engagement which may be sufficient for the ordinary exercise of Parliamentary functions, is not necessarily sufficient to mandate Parliamentarians to assume they are empowered to act on citizens' behalf without seeking ways of ensuring their approval.

We would warn against conventional manners of creating the assumption of popular consent.

The support that a political party enjoys, whether because of the perceived effectiveness of its leaders or because of a broad endorsement of their electoral program, cannot be assumed to equal to a mandate to change 'the rules of the game'. On the contrary a more reasonable assumption would be that the support granted to a political party is actually conditional on the rules of the game the last time that support was sought and secured.

Also the support enjoyed by an MP or a political party in Parliament is given conditionally on the expiry and re-examination of that support within a finite period of time (not more than 5 years). Changes to the Constitution however do not have such an expiry date and are designed to bear the test of time.

We would also warn against the flippant use of referenda to short-circuit the principles identified earlier in this document merely to allow Parliamentarians to tell themselves that by implementing the Constitutional changes they are doing so on the instructions given them by popular will expressed in a referendum.

We are not here expressing some principled view against referenda as such.

We are however warning that a package of unconnected and complex reforms rushed through a yes/no singular vote perhaps even after some conscience-absolving 'education campaign' designed and financed by those in favour of those changes could be rubber-stamped by plebiscite.

Such a process is dangerous and, although apparently democratic, risks proving quite the opposite: a populist reversal of hard won democratic rights.

CASE STUDY: Iceland

One of the most significant features of Iceland's recent constitutional reform project was the extent of public participation, something that had been actively encouraged from the start of the process.

The first mechanism for achieving this was ensuring that ordinary citizens were able to participate in meetings and form decision-making bodies. The National Forum and the Constitutional Council were both diverse bodies, composed of a representative cross-section of Icelandic society. This helped to ensure that the draft constitution was informed by a range of voice and opinions, and was not dominated by party politics.

Perhaps the more significant factor in the Icelandic process was the use of 'crowd-scouring' methods to identify the values that should underpin and the content of the provisions of the draft constitution. Public participation in the Icelandic reform process was facilitated by innovative and effective use of the internet and social media. This gave the Constitutional Council access to a very wide range of opinions when formulating its proposals, and facilitated a responsive drafting process that could fully engage interested members of the public in the constitutional reform project. The transparency provided by the crowd-sourcing method may also have meant that the Icelandic people were able to consider themselves a valuable and equal part of a process that was not dominated by vested interests. Although the Council was advised by experts, it did not invite representatives of interest organisations to special meetings, but these organisations – bankers, boat owners, farmers, politicians – had the same access as everyone else to the Council, its open meetings, and to individual Council members. This was an important benefit of the crowdsourcing aspect of the operation: it created a framework for inviting everyone to have a seat at the same table.

The level of public participation in the Icelandic constitutional reform process may also have had a more fundamental effect. Perhaps the most important - and possibly most enduring - result of the process has been the recognition of the Icelandic people as an accepted constitutional actor.

3. Procedures to secure consensus for reform

a. The current framework

At present there exists a ‘Steering Committee’ chaired by the President of Malta Marie-Louise Coleiro Preca and that includes three representatives each of the Labour Party and Nationalist Party. Not all the representatives are Members of Parliament however those that are not have in the past occupied the position of Deputy Prime Minister.

The Steering Committee includes the incumbent Minister of Justice and two persons who occupied that position in the past.

We are informed by the Committee itself that it is presently reviewing proposals for Constitutional changes made in the recent past right up to the recommendations made by the Council of Europe’s Venice Commission.

We are also informed the Committee intends to oversee an ‘educational campaign’, intends to provide information to the public over a specific website and intends to engage with non-governmental organisations.

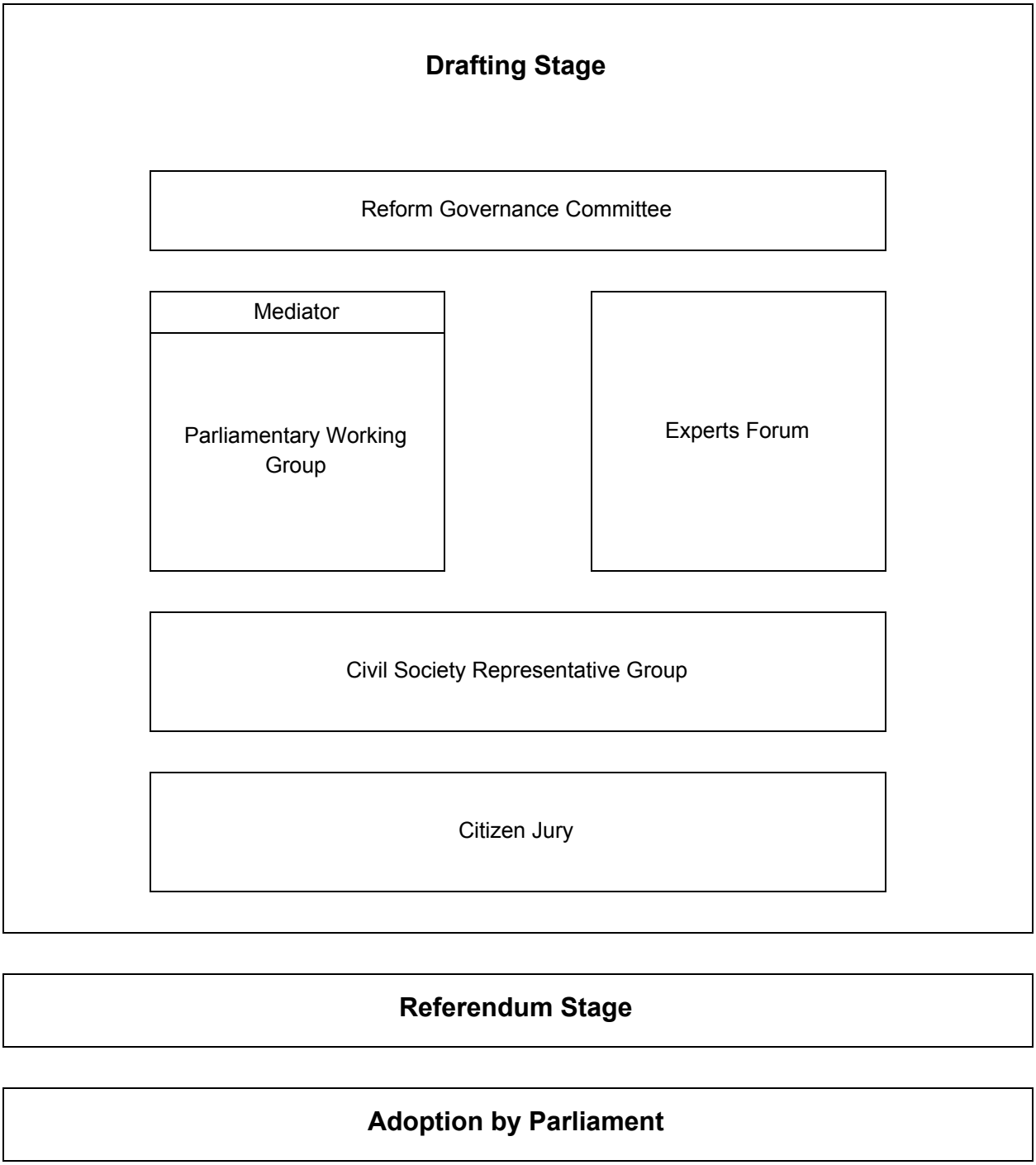
It is our understanding that the Steering Committee has been designed to foster an environment of dialogue and mutual trust between the two major political parties, the support of both of which will be needed to secure any reform. We perceive the role of the President of Malta in the Steering Committee as that of a mediator, one who is perceived by both parties as a trusted and capable mediator who has experienced the Constitution from the point of view of a political party senior officer, a Member of Parliament on both sides of the House, a government Minister and as President of Malta.

It is also our understanding that although the Steering Committee has commenced its review of proposals of organisations and individuals outside its present composition it has not yet articulated and it has certainly not yet externalised its intended procedure for engagement outside itself.

Our proposals will incorporate the model of the existing Steering Committee as we consider that the motivations for its design are essential for the process to reach any form of conclusion. However we feel that consensus reached in the existing Steering Committee set up should be the commencement of an approval process before a Constitutional Act of Parliament rather than its conclusion.

b. Proposed framework

The framework we are proposing has four essential elements that would together govern the consideration of Constitutional reforms prior to any ratification by referenda and/or adoption by Parliament, as follows:



1. Drafting Stage

I. Parliamentary Working Group

This Group is by and large the model of the existing Steering Committee which would retain its current scope of assessing historical and present proposals for Constitutional reform with a view to:

- Determine which proposals are likelier to secure cross-party consensus;
- Prioritise and rank recommendations in the context of the government's legislative program and the shared aspirations of the political parties;
- Engage in informal dialogue that evaluates the recommendations made;
- Provide a forum for the parties themselves to share proposals arising from within their own ranks, think tanks or internal bodies;
- Seek a long term view beyond the present or the next legislative term for a shared commitment to reform.

We support the idea of having the group led by a competent person that the participants perceive to be above their different interests but committed to their shared objectives. We have no adverse comments to make about Marie Louise Coleiro Preca, given that we understand that the participants in the existing Steering Committee are happy with her choice.

We feel that it is inappropriate for the President of Malta to be leading this working group or to have any form of role in the consideration of proposals for Constitutional reform as the views expressed by the President, even if a reflection of the consensus of the political parties, are a prejudice to the outcome of the process and a compromise on the President's role to represent national unity.

Consensus between political parties is not equivalent to national unity and the President should not lend her institutional authority to support even the consensus of political parties on a matter that could remain controversial if other actors in the reform process do not agree, or were it not for her support would not have agreed.

Since the term of office of President Coleiro Preca is in any case almost exhausted and in any case she has not while still in office expressed any view one way or another in favour of or against any proposal for reform, we feel that her nomination as an individual to continue to mediate and host the discussions of representatives of the political parties is in no way objectionable.

We would also add that we consider it appropriate for all Parliamentary Parties to be included in the Working Group's proceedings as an internal and inseparable element of the composition of the present Parliament rather than having the third party treated as some form of external consultee.

Finally we would recommend, in line with principle IV outlined above, that the proceedings of the working group are streamed online and transcribed.

II. Experts Forum

This organ would group together experts that can provide advice to the other organs in the drafting stage, but also to the independent media and to the public and support the process with informed analysis, opinion and research.

The Forum would act independently of the other organs and participants in the forum will have access to all questions put to it by any external body or individual. The aim is not necessarily to secure consensus among all experts. On the contrary at this point, contrasting views could provide alternative options and allow actors to take informed decisions that can consider multiple but appropriately informed points of view.

All members of the Forum would be free to provide opinions in response to questions put to the Forum, to support or to dissent from other views expressed by other members or to produce opinions or advice on their own initiative without necessarily waiting for a question to be put to the Forum.

Of course the Experts Forum will include recognised local theoreticians and practitioners in the field of Constitutional law.

However we submit that the pool of experts should also include competent persons from other complementary fields such as legal experts in other sectors, political scientists, sociologists, anthropologists, philosophers, historians, economists and the like.

The Experts Forum is to have sufficient resources to fund specific research when enough participants deem that a question that requires analysis for an informed decision to be taken cannot be answered by resorting to the existing body of research.

The Experts Forum should also be complemented by former practitioners such as former Parliamentarians, retired senior civil servants, retired mayors, retired judges of courts including the Maltese courts and the European Court of Human Rights and the European Court of Justice.

The Experts Forum should not have a leading officer as such but should be supported by an administrative secretary that administers engagement with the other organs, the media and the public at large.

III. Civil Society Representative Group

The models we are looking to here are not unlike the Malta-EU Steering and Action Committee first drawn up to consider another major legislative reform program at the time of Malta's accession to the EU which can be deemed of a scale necessitating community engagement comparable with Constitutional Reform.

The list of member organisations in MEUSAC (attached as Annex B) and the procedure it adopts of relating with a core group for its governance processes and engaging with all member organisations on a basis of remote information exchange could be a useful model for the present process.

However the Civil Society Representative Group should exclude the participation of the government, institutions, local councils and political parties who have the opportunity to play in to the reform process elsewhere in the structure.

Appropriate attention should also be given to ensure the participation of bodies that represent organisations in categories listed under the Non-governmental sector headings of the section above on 'actors' in the reform process as a number of these sectors are not adequately included in the MEUSAC framework because that has a scope which is different from the present objective.

As with the Experts Forum, participants in the Civil Society Representative Group should be at liberty to express views that support or are in dissent with other views of other members of the Group in response to questions or proposals made by any other organ in the reform process.

A core group reflecting representation of the broad spectrum of competences within the Representative Group should be appointed to facilitate the engagement with all participant organisations and to create fora and opportunities for information exchange, debate and possible resolution.

These can include, inter alia, conferences, seminars, briefing documentation and any other method the core group deems appropriate.

The core group would not have the authority to speak as a body on behalf of its member organisations unless it has ascertained an informed consensus of all its participants.

CASE STUDY: Indonesia

The need for constitutional renewal in Indonesia arose out of the collapse of President Soeharto's authoritarian regime in May 1998. The body in charge of amending the Constitution was the People's Consultative Assembly. Composed of 700 members in total, the PCA included 500 Members of Parliament and 200 appointed delegates including 135 regional representatives appointed by provincial parliament, and 65 representatives from civil society groups appointed by the president.

Constitutional reform in Indonesia unfolded gradually and represented an exclusive and largely opaque process. The factions represented in the PCA made the majority of the decisions that shaped the process, with limited space for outside stakeholders to voice their preferences. Despite the handful of attempts that the PCA made to include the public in the second and third amendments, constitutional reform remained a high-level political process only. The PCA held several public consultations; however, these outreach efforts were largely limited to urban areas, and discussions therein were largely dominated by local government officials and community leaders. Crucially, the process suffered from the absence of a clear roadmap, which made it difficult for the public to follow and contribute at key points.

CASE STUDY: Scotland

The first official meeting of the Scottish Constitutional Convention took place on 30 March 1989. Participants in the Convention included the major Scottish churches, the Scottish Women's Forum, representatives of ethnic minorities and the Federation of Small Businesses. Various special interest groups and trades unions were affiliated. Political parties taking part were the Labour Party, the Scottish Liberal Democrats, the Scottish Green Party, the Orkney and Shetland Movement and the Scottish Democratic Left. The Scottish Trades Union Congress took part, as did various regional, district and island councils and the Campaign for a Scottish Parliament. While the SNP and Conservative Party did not participate, individual members of those parties did, as well as lending their public support to the Convention.

A key feature of the Convention was that it enabled different groups and political parties to collaborate. The patient work of the Convention in preparing the ground for the introduction of devolution brought together key political parties and civil society groups.

IV. Citizen Jury

This proposal might seem at face value to be the most unconventional in the procedure that we propose. It is however firmly grounded in methods that are applied in the administration of justice in Malta and therefore a key element of our shared understanding and tradition of what we think is democratic life.

In serious criminal cases a person accused of a crime is entitled to a trial by their peers. A jury is neither selected for specialist legal competence (as, say a judge would be) nor does it acquire legitimacy by some popular choice or election.

On the contrary the legitimacy of a jury's judgement is grounded in the ordinariness of its members, the fact that they have not sought the role or any reward for exercising it and though guided by the wisdom of the presiding judge and advised by the competent expertise of counsels for the defence and the prosecution, their relative lack of technical expertise is considered as a guarantee of the objectivity and common-sense grounding of their verdict.

Jury selection does have a threshold of competence which rules out for example persons that are too close to the case or the persons involved in it or persons who, for example, are not literate. It also relies on the adversarial model of two parties equipped with equality of arms providing two sides of the story on which they must express a verdict.

The Citizen Jury in the constitutional reform process that we propose would be an organ of 70 people, approximately equivalent to the size of our Parliament selected to represent the geographical, gender and age distribution of Malta as close to proportionately as is reasonable.

The Citizen Jury would otherwise be selected entirely randomly, by lottery, from the existing list that the Court Registrar uses today to propose candidates for jury duty in the criminal courts.

The role of the Citizen Jury would be to hear and consider proposals for constitutional reform and to provide a verdict that would guide Parliamentarians on how successful they are in persuading ordinary citizens that the reforms that they have agreed on can be said to have the consent of the public at large.

Therefore a proposal that in the Parliamentary Working Group has, after due consideration of the views -- favourable or not -- expressed by the Experts Forum and the Civil Society Representative Group, is submitted for the consideration and verdict of the Citizen Jury.

The proposal would be examined in a form of dialectic with a party arguing for the consensus of the Parliamentary Working Group and a party arguing against. The party arguing against would be equipped by the dissenting views expressed in the Experts Forum and the Civil Society Representative Group and would be granted equality of arms in its ability to present the arguments against in front of the Citizen Jury.

The Citizen Jury would change in its composition with every new phase of reform and a set of proposals in a particular phase that has been rejected by a sitting Jury can be presented again to another Jury at a later stage.

The Citizen Jury would appoint a foreperson that would be provided with the training and resources to ensure the smooth execution of its function. The foreperson would be advised by a permanent secretariat that would assist the Citizen Jury in all its stages of existence.

CASE STUDY: Iceland

The importance of public involvement in constitutional reform was demonstrated by a 'National Assembly' attended by a randomly selected, statistically representative sample of 1200 people, along with a further 300 individuals from assorted institutions. This amounted to a sample of 0.5% of the Icelandic population. The Assembly sought to harness "the wisdom of the crowd" to draft a manifesto embodying a set of core Icelandic values and a vision for the future. The event was organised by 'the Anthill', a private collective receiving some public funding. The government sought to work in partnership with the campaign and build on 'the Anthill' experience. Accordingly, the Bill on a Constitutional Assembly was modified to enable the formation of a similarly composed "National Forum" to identify the public's principles and priorities in advance of the Assembly's deliberations.

In its final form, the Bill on a Constitutional Assembly reflected the ideal of a compact, popularly-elected institution, operating transparently and with a clear sense of public participation.

CASE STUDY: Ireland

The Constitutional Convention was created in accordance with the terms of a Resolution approved by both Houses of the Oireachtas in July 2012.534 The Convention was thus authorised to consider, make recommendations, and report to the Houses.

The 100 members of the Convention included a Chairperson, 66 citizens and 33 elected politicians. In addition, experts were drafted in to act as speakers, advisors and mediators with other non-governmental organisations and interest groups able to make written submissions. The 66 citizen members were 'randomly selected [from the electoral register] so as to be broadly representative of the Irish by an independent polling company on behalf of the Government during July and August 2012, as follows:

- The sample was 'stratified across a total of 16 broad regions' in order to 'ensure a representative geographical spread of citizens, covering all of the main urban and rural population centres across the country';
- In addition, 'detailed quotas were set in relation to age within gender, socio economic status, and working status';
- The 16 broad regions were divided into 'District Electoral Divisions' designed to reflect 'the known population distribution across [each] region'; Interviewers approached citizens within those District Electoral Divisions, starting at a 'randomly generated' address and continuing until the quotas were achieved;
- If a citizen was interested in taking part in the Convention they were 'given an information booklet explaining what the Constitutional Convention was, who would be participating in it, how it would work throughout the year, and the type of issues that would be discussed at it'.

The Convention process consisted of monthly meetings lasting a weekend with members voting on final recommendations following a presentation and discussion. They were in operation from December 2012 to February 2014 and mandated to cover eight issues but an additional two were selected by the assembly themselves. Furthermore, the plenary sessions were open to the public and streamed live. Despite the fact that the process was consultative rather than decisive, the government was obliged to respond to all recommendations within an agreed timeframe and hold a debate in Parliament. Given the success of the Convention, the Irish Parliament created another resolution to hold a second Citizens' Assembly to consider a further five issues.

V. Reform Governance Committee

The Reform Governance Committee has the function to ensure that:

- The Principles of the reform process are respected;
- The smooth interaction and engagement between all organs of the reform process;
- The recording and public access to the proceedings and their content;
- The protection of minority views and equality of access and resources for those expressing dissenting opinions;
- The selection of participants in the Experts Forum;
- The selection of the Core Group of the Civil Society Representative Group with appropriate regard to the wishes of the participant organisations.

The Committee would be composed of five persons as follows:

1. A retired Ombudsman;
2. A retired Permanent Secretary;
3. A retired Judge or Magistrate;
4. A person chosen by election from the Core Group of the Civil Society Representative Group;
5. A chairperson.

Persons 1, 2, 3 and 5 would be chosen by consensus by the leaders of Parliamentary parties. We see no reason why the person working as Mediator of the Parliamentary Working Group should not also be the Chairperson of the Reform Governance Committee.

In its decisions, particularly with respect to the selection of participants in the Experts Group, the Reform Governance Committee shall seek the advice of specialist international assistance.

2. Referendum Stage

As we have explained we would consider resorting to referenda as unwise and quite positively dangerous if this is done as a catch all process to force a package of reform by a process of flag-waving mobilisation that forces Parliamentarians to somehow obey a popular instruction which is uninformed or in any case unprepared.

We would however consider that should a cross-party consensus in the Parliamentary Working Group on an aspect of reform not meet the approval of the Citizen Jury, political parties should before considering the proposals in Parliament consult the electorate in a referendum on the following essential criteria:

Firstly, that a referendum is called on a single question at a time; that the question is such that only a yes or no answer is applicable; and that the question is limited to a single and coherent theme in a single phase of the reform. We therefore rather consider the possibility of multiple referenda at various stages of the reform rather than a single catch all vote.

Secondly, that equal opportunity is given to the presentation for the voting population of arguments for and against the consent of the proposed reform. This is particularly significant since the premise of a consensus between the PL and the PN means that the argument in support of the reform is equipped with overwhelming media and communication resources that make the process of approval in a referendum a populist formality. It is therefore imperative that specific rules are prepared that govern the campaigning and the governance of the referendum to provide state-funding for the presentation of the arguments against the approval of the amendments.

Thirdly, that the threshold of approval of Constitutional amendments that require the consent of two-thirds of the House is not undermined by a plebiscite that reaches its decision by a simple majority of votes cast. We would therefore consider that the consent sought by the political parties from the electorate should secure a minimum participation rate of 60% of eligible voters and a minimum rate of consent of 60% of the votes cast.

Matters that are specifically of concern to Gozo will furthermore require the double consent within Gozo at the same minimum levels as those required for the entire voting population.

Fourthly, when a broad consensus on a segment of the reform has been secured by the Parliamentary Working Group, the Experts Forum and the Civil Society Representative Group and a politically persuasive verdict has been secured by the Citizens Jury, we are of the view that a referendum is not necessary before political parties proceed to submit the reform in a Bill for Parliament's consideration.

CASE STUDY: Australia

In accordance with the recommendation of the Constitutional Convention and the requirements of section 128 of the Australian Constitution, two bills were introduced into the Federal Parliament on 10 June 1999. The Constitutional Alteration (Establishment of Republic) Bill and the Presidential Nominations Committee Bill sought to 'give effect to the republic model developed by the Constitutional Convention'. Both proposals for alteration of the constitution were rejected by the Australian public.

One reason for the public's rejection of the referendum model may have been a 'growing perception among many Australians that the whole constitutional reform process was dominated by politicians to the exclusion of community views and aspirations'. This was illustrated by the late decision to hold a referendum on a preamble for the Constitution. The preamble proposal was subject to no detailed public or parliamentary consultation and was instead 'revised according to a deal between the Government and the Democrats, who held the balance of power in the Senate, before being rushed through Parliament'.

This sense of alienation between politicians and the public highlights the need for greater public education about constitutional reform.

3. Adoption by Parliament

Of course the process of Parliament to adopt amendments to the Constitution is already provided for in the Constitution itself.

We would however make the argument that insofar as the Constitution requires the consent of two-thirds of Members for the Constitution to be changed, the expectation of the Constitution is that the normal informal methods of Parliamentary whips and mobilisation along party lines should not apply.

This is more, not less obviously the case, where delegations acting on behalf of the Parliamentary parties have sought and obtained consensus outside the Chamber.

It is therefore our view that political parties should undertake not to exercise their whip on Members of Parliament, granting them a free vote when voting on matters requiring the consent of two-thirds of the House and to instead allow MPs to speak and vote on the basis of their conscience irrespective of any commitments made in the Parliamentary Working Group or the outcome of any other process of engagement, including referenda.

CASE STUDY: Belgium

The Belgian media is divided along Dutch-language and French-language lines, and reporting often reflects the interests of the respective communities. The constitutional reform of 1993 was a case in point. The provision of information to the media by politicians was tailored to the audience of the particular media outlet, and coverage varied. Flemish news outlets minimised expressions of anti-separatist opinion in Wallonia, whereas Wallonian papers were apt to give extra prominence to expressions of Flemish independence. Reports reflected preconceived attitudes. For example, as the *accords de la Saint-Michel* were initially greeted favourably by the Flemish press, some argued that the *accords* therefore favoured the Flemish.

Opinion polling showed that a majority of the public supported a referendum. According to polling organisation Sobemap, in February 1993 there were majorities in favour of such a measure in Flanders (60%), Wallonia (65%) and Brussels (70%). Conversely, few claimed to have a very good or good knowledge of the content of the *accords*. A sizeable minority had not even heard of them. There was therefore interest in the constitutional reform process, but it was often ill-informed.

The political class might be said to have taken advantage of this lack of understanding. Sensitive to the controversial nature of the issue, the pro-reform camp were anxious not to stir up public feeling, whereas the Liberal opposition tried to agitate and antagonise. As a result, the events of 1993 reinforced a widespread impression that Belgium was governed by a closed party system at the mercy of political machinations, and that, in the words of the Prime Minister during one televised debate, although certain things could be said in public, other things were best discussed behind closed doors. The hope that the constitutional reform process might restore to parliament some of its lost prestige was in vain.

At Annex A we are providing a high level illustration that provides a hypothetical decision-making flow for a discussion on a proposal which for this example is being labelled ‘Reform A’.

The flowchart is necessarily a simplification of a complex process so should not be considered by any means exhaustive. It is assumed that a number of steps will be ongoing throughout and the whole would be overseen by the relevant monitoring bodies at all stages.

4. Recommendations on Community Engagement

The process of reforming the Constitution is a real opportunity to promote active citizenship and to ensure that the process of reform not only refines possible defects in Constitutional design but help in addressing a cultural deficit in a lack of awareness, interest and engagement in the country's civic community.

Even allowing for the possibility that the process does not result in the adoption of any amendments, the cycle of debate, expert review and community engagement could provide a rewarding benefit in a more engaged and more active citizenship and therefore a more relevant democracy for our times.

We would therefore recommend that:

a. All proceedings of all the bodies in the reform process are streamed online, all documentation is made publicly available and all stages remain open to individual or collective petition by any citizen that may wish to contribute a view at any stage;
b. Specific resources are allocated to provide training, expert opinion and support to independent media to equip them with the capacity to monitor, report on and critically assess the reform process in all its stages. This should include providing media organisations with discretionary funding to recruit journalists with specific relevant competences required to adequately cover the process;
c. A train-the-trainer program is established to provide a large team of impartial community trainers that provide information and empowerment to local communities, smaller organisations and over the media;
d. The process of public engagement should not be governed by the Parliamentary Working Group but should rather be administered by the Core Group of the Civil Society Representative Group under the broad oversight of the Reform Governance Committee. Its budgeting and resourcing should be administered separately and independently from the Executive.

CASE STUDY: South Africa

After organising its work through the establishment of thematic committees – each of which was tasked with drafting a chapter of the future constitution – and a coordination committee, the newly-elected NCA decided to engage the general public in the constitution-making process. As such, it launched a widespread civic education campaign to sensitise South Africans to the process. The thrust of this initiative was to provide the public with a fundamental understanding of the constitution in order to facilitate their effective participation in the reform process. Nation-wide information sessions and workshops were held to inform South Africans about 1) the purpose and process of making a constitution, 2) their right to participate, and 3) the potential of a constitution to recognise and protect the rights of the people. To include illiterate persons in the process, the government also used cartoons, comics and booklets with graphics. This civic education campaign was estimated by an independent survey to have reached 73% of all South African adults

Throughout the drafting of the constitution, the NCA worked to make the process as transparent as possible by providing daily news updates on the drafting process through a well-planned communication policy. Every two weeks, the Constituent Assembly published 160,000 hard copies of an eight-page newsletter outlining the most recent debates and points on the agenda. In addition, the NCA broadcast a series of talk shows focused on the constitutional reform process throughout the drafting process. The NCA also provided continuous information to the public via its radio programme, which it aired in eight different languages on national and local radio stations.

In addition to its efforts to achieve transparency and information, the NCA designed numerous direct interaction tools to enable civil society groups as well as the general public to make proposals and have their voices heard. The NCA implemented direct interaction mechanisms in three stages. The first direct interaction stage began in January 1994 when the thematic committees of the NCA invited the public to submit suggestions for the production of a collective "wish list". To facilitate this first round of public consultation, NCA members held public meetings in their constituencies to present their work and review the progress of the drafting process. These public meetings provided the public with an opportunity to raise questions, concerns and comments as well as make proposals. Constituent Assembly members and experienced CSOs also held meetings to discuss technical issues.

The second direct interaction phase took place after the finalisation of the first draft constitution in September 1995. The NCA published 5 million copies of the draft constitution and called upon the public and CSOs to submit written statements about – and proposals for – the text. In response, the NCA received more than 250,000 suggestions. The NCA discussed the proposals and incorporated a number of them into the draft text of the constitution.

The third direct interaction phase took place following the adoption of the new Constitution (which 85% of the NCA supported) and its entry into force in March 1997. In the subsequent "National Constitution Week", the NCA distributed millions of copies of the Constitution across the country in the eleven official languages of the country.

CASE STUDY: Australia

The National Human Rights Consultation (NHCC) (2008-2009) aimed to 'seek out the views and experiences of the broadest possible range of community members interested in human rights – the mainstream public as well as vulnerable and marginalised groups'. In this respect it was 'particularly concerned to hear from Indigenous Australians, the homeless, people with disabilities, people with mental illness, refugees, new migrants, prisoners, and individuals and organisations involved in the protection and promotion of rights'. The Committee also sought the views of 'lawyers, academics, parliamentarians, judges, senior public servants and senior police'.

The Committee employed a wide variety of methods of public engagement:

1. Written submissions
2. Community roundtables
3. Consultation website and Facebook pages
4. Online forum
5. Additional meetings
6. Public hearings
7. Phone survey and focus group research
8. Devolved Consultation aimed to cast light on the experiences of marginalised and vulnerable groups. Working with NGOs for homeless people, people with mental illness and physical disabilities, recently arrived refugees and people released from detention, ex-prisoners, the aged, and people with dependencies
9. Social and economic cost-benefit analyses
10. Advice from the Solicitor-General
11. Broader community discussion

5. Legislative Framework

Our recommendations require political parties to exercise restraint and not to feel they are entitled to legislate changes to the Constitution even when the existing legal requirements governing those changes are satisfied by their consent.

This would require the political commitment of political parties to exercise that restraint and the undertaking that they would not use their incumbency to direct the process of change to avoid even the suspicion that they are seeking to protect and perpetuate their authority rather than to act to enhance the viability of our democratic polity.

Political parties are also in and of themselves a profoundly structured edifice of community engagement involving public spirited people from all walks of life and covering the entire territory. We still see little evidence that political parties have initiated a grassroots discussion within their ranks to bring up bottom up engagement in a project that should have the broadest participation possible.

We would therefore encourage political parties to initiate internal debates within their organs engaging as many of their party members as possible seeking views that could inspire changes informed by years of experience of activism in our democracy.

Some of these procedures will also highlight inadequacies in our present Constitutional set-up even before any substantive debate on the matters themselves has been touched upon.

By way of example it is arguable that the composition of the Broadcasting Authority as provided for in the Constitution, relying as it is on the two sides of Parliament to nominate its members, can be a matter that ought to be reviewed in a specific phase of constitutional reform. A similar argument could be made about the composition of the Electoral Commission.

It is clear however that for the purpose of regulating a referendum campaign or a referendum ballot on a question where the two political parties are on one side of that engagement and on the other side there are organisations that today have no say in the selection of the Broadcasting Authority and the Electoral Commission, the current institutional model is entirely inadequate.

It is therefore imperative that a fair and informed debate about the governance of the reform process is immediately entered into with a view of adopting immediate enabling legislation, including quite possibly enabling amendments to the Constitution that properly and fairly regulate the process of its more permanent reform.

Repubblika is committed to participate to the fullest extent possible in the discussion on this enabling framework in the spirit of the Principles set out in this document.

We have no doubt in our mind that with control of all TV media and disproportionate influence on all other media, and with considerable resources at their disposal political parties could mobilise campaigning for a 'yes' argument in a way that it can never be properly and meaningfully matched by the alternative point of view.

An independent regulation that guarantees proportionate access to media, including media owned by political parties, and funding provided by the State towards NGOs campaigning on the 'no' side is a sine qua non if this effort is going to have any democratic credibility.

We cannot emphasise enough our considered view that failure to secure a broad agreement on the process of change may in itself facilitate a form of change which would prove undesirable or counter-productive. We would hope that no one at this point is desirous of change for its own sake but rather that there is a broadly shared aspiration for a refinement and improvement of our democratic and constitutional experience.

We also wish to place our recommendations in the context of our view that with all the good faith in the world that has been expressed by the political parties, we are extremely concerned that the incumbents have often proven short of their democratic obligations and commitments. Consensus between them is in itself no comfort.

In the spirit of constructiveness and good faith, Repubblika does not wish to express blanket hostility to Constitutional reforms purely out of mistrust of the political actors involved. However it is our obligation as active and vocal members of civil society to recommend appropriate safeguards that we feel would mitigate the risks that we are deeply concerned with.

Repubblika reiterates its disposal to provide any further information that may be required in support of these recommendations.

CASE STUDY: New Zealand

Although New Zealand has a history of asking constitutionally significant questions by referendum, both the 1992 and 1993 referendums were conducted pursuant to specific enabling legislation. The public were able to make submissions on both pieces of legislation.

A referendum was legally required for the adoption of the proportional system because certain sections of the Electoral Act 1956 were entrenched and could not be changed without being approved by a simple majority referendum vote or a majority of 75% of the members of Parliament.

The Electoral Referendum Act 1991 provided for the holding of the referendum, the form of the ballot and the order in which the options would appear, the appointment of scrutineers and the declaration of the result. No limits were imposed on the amount that could be spent promoting any of the five electoral systems under consideration, although advertising and literature had to be imprinted with the name and address of the promoter.

The government also established an independent panel known as the Electoral Referendum Panel chaired by the Chief Ombudsman to provide the public with information about the four alternatives to FPP. Its task was hampered by a lack of clarity as to how the non-MMP options would operate in practice.

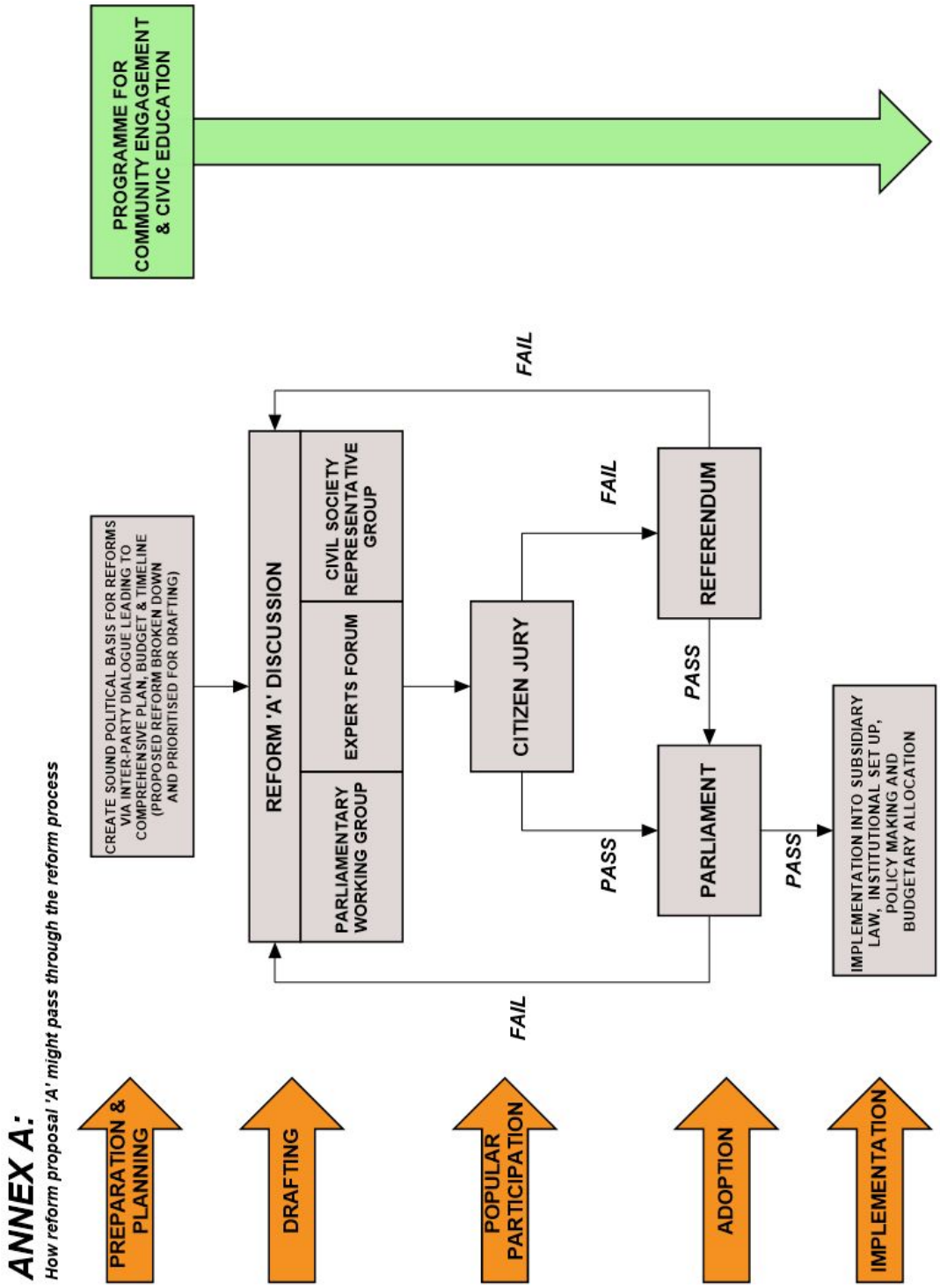
Following the vote for change, the Parliament again enacted specific enabling legislation for the second, binding, referendum. The Electoral Referendum Act 1993 again provided for the conduct of the referendum, the form of the ballot, the declaration of the vote and various electoral offences.

The New Zealand experience of electoral reform is notable for the smooth way in which the possible change was investigated, reported, and then presented to and voted on by the general public.

Particularly relevant to the success of electoral reform was the way in which political actors largely stood back from the process of reform, no doubt because they were at the heart of the groundswell for change. The government neither influenced the recommendations of the Commission nor did it seek (apart from the comments of individual MPs) to influence the public debate on reform options.

In addition, the adoption of clear principles by which to guide the assessment of voting systems by the Royal Commission, twinned with its grounding in New Zealand's political, social and constitutional history, meant that the report was effectively unimpeachable. The involvement of the people, both in terms of the Commission's invitations to submit and the way in which the Commission made itself available to hear the views of the New Zealand public, also in my view contributed to the standing of the report and its recommendations.

Annex A


ANNEX A:
How reform proposal 'A' might pass through the reform process
PREPARATION & PLANNING
DRAFTING
POPULAR PARTICIPATION
ADOPTION
IMPLEMENTATION
PROGRAMME FOR COMMUNITY ENGAGEMENT & CIVIC EDUCATION
CREATE SOUND POLITICAL BASIS FOR REFORMS VIA INTER-PARTY DIALOGUE LEADING TO COMPREHENSIVE PLAN, BUDGET & TIMELINE (PROPOSED REFORM BROKEN DOWN AND PRIORITISED FOR DRAFTING)
REFORM 'A' DISCUSSION
PARLIAMENTARY WORKING GROUP
EXPERTS FORUM
CIVIL SOCIETY REPRESENTATIVE GROUP
CITIZEN JURY
REFERENDUM
PARLIAMENT
IMPLEMENTATION INTO SUBSIDIARY LAW, INSTITUTIONAL SET UP, POLICY MAKING AND BUDGETARY ALLOCATION
FAIL
FAIL
FAIL
PASS
PASS
PASS

Annex B

Existing organisations in MEUSAC

- 2 Wheels Foundation Malta
- Action Group Against Bullying
- Active Youth
- ADHD Family Support Malta
- Aditus
- AEGEE-Valletta
- African Media Association Malta
- Agara Foundation
- Alive Charity Foundation
- Allied Rainbow Communities
- ALS Malta
- Alternattiva Demokratika
- AMACS
- Animal Protectors Malta 1208
- Anti-Poverty Forum Malta
- Are You Active (AYA) Malta
- Arka Foundation
- Art Club 2000
- Arthritis and Rheumatism Association Malta (ARAM)
- Association des Professeurs de Francais de Malte (APFM)
- Association for Consumer Rights Malta
- Association of Anaesthesiologists of Malta
- Association of Maltese Arms Collectors and Target Shooters
- Association of Lyceum Past Students (ALPS)
- Association of Reality Therapy – Malta
- Association of Speech Language Pathologists
- Association of Students of Commercial Studies
- Association for Abandoned Animals
- Assoċjazzjoni Sportiva Hibernians
- Assoċjazzjoni tal-Bdiewa
- Assoċjazzjoni tas-Sidien tal-Caravans u Bungalows
- Athleta Basketball Nursery
- Balluta Residents Association
- Biological Conservation Research Foundation
- BirdLife Malta
- Birkirkara Volleyball Club (BKVC)
- Birżebbuġa Windmill Football Club Nursery
- BLITZ
- Breeds of Origin
- Calypso Sub-Aqua Club
- Chamber of Advocates
- Chamber of Engineers
- Circolo San Giuseppe Filarmonika Sagra Familja
- Civil Assistance Training Organisation (CATO)
- Confederation of Malta Trade Unions
- Coordinating Committee of the Russian Compatriots
- Dar Ġużeppa Debono

- Dar Ġużeppa Debono Association
- Dental Association of Malta
- Din l-Art Ħelwa
- Don Bosco Oratory
- Down's Syndrome Association
- Dr Clown
- Drachma
- Emergency Fire and Rescue Unit
- Emergency Response and Rescue Corps
- Enemalta Professional Officers Union
- Equal Partners Foundation
- Europa Donna Malta – Breast Cancer Support Group
- European Auxiliary Police Association
- Federated Association of Travel and Tourism Agents
- Federation of Malta Hotels, Pensions and Catering Establishments
- Federazzjoni Kaċċaturi, Nassaba, Konservazzjonisti
- Filipino Community in Malta
- Filmed in Malta
- Fondazzjoni Belt Victoria
- Fondazzjoni Fortunato u Enrico Mizzi
- Fondazzjoni Santa Ċeċilja A.D. 2013
- Forum of Residential Service Providers to Persons with Disability
- Foster Foundation
- Foundation for Shelter and Support to Migrants
- Fratellanza ta' San Ġużepp
- Friends of the Sick and the Elderly in Gozo
- Gaulitanus Choir
- General Workers' Union
- General Workers' Union Youth
- Genista Research Foundation
- General Retailers and Traders Union
- Geriatric Medicine Society of Malta
- Għaqda Armar Xewkija
- Għaqda Karmelitana Banda Queen Victoria Żurrieq
- Għaqda Każini tal-Banda
- Għaqda Banda Żejtun
- Għaqda Mużikali Immakulata Kunċizzjoni – Ħamrun
- Għaqda Mużikali San Ġorġ Martri Qormi
- Għaqda Mużikali San Leonardu
- Għaqda Mużikali Sant'Andrija
- Għaqda Mużikali Sant'Elena
- Għaqda Mużikali Santa Marija Dingli; AD 1985
- Għaqda Studenti tal-Liġi
- Għaqda tal-Konsumaturi
- Gozo Business Chamber
- Gozo Live
- Gozo NGOs Association
- Gozo Tourism Association
- Gozo University Group
- Gozo Youth Football Association
- Greenhouse
- GS1 Malta
- Hair and Beauty Federation
- Happy Paws Charity Organisation
- Ħbieb tal-Aġenzija Sapport
- Hooked on Fishing Club Malta
- Imperial Band Club

- Inħobbu l-Munxar u x-Xlendi
- Inservi Foundation
- Insite – The Student Media Organisation
- Inspire
- Institute for the Research and Improvement of Social Sciences
- Integra Foundation
- Intelligent Transport Systems Malta
- Jesuit Refugee Services
- Jubilate Deo Choir
- Junior Chamber International (Malta)
- Kaċċaturi San Ubertu
- Kalkara Football Club and YN
- Kamra tal-Ispiżjara
- Kamra tal-Periti
- Karl Vella Foundation
- Każin Santa Liena Banda Duke of Connaught's Own
- Koperattivi Malta
- KOPIN – Koperazzjoni Internazzjonali Malta
- Kunsill Nazzjonali tal-Anzjani
- Kunsill Nazzjonali taż-Żgħażagħ
- Kunsill Studenti Universitarji
- Legio X Fretensis
- Lift Us Up
- Local Councils' Association
- Maleth Sinfonia Keyboard Orchestra
- Malta Amateur Radio League
- Malta Association for Contemporary Music
- Malta Association for the Councelling Profession
- Malta Association of Family Enterprises
- Malta Association of Hospitality Executives
- Malta Association of Occupational Therapists
- Malta Association of Parents of State School Students
- Malta Association of Physiotherapists
- Malta Association of Professional Conservator-Restorers
- Malta Association of Public Health Medicine
- Malta Basketball Association
- Malta Boxing Federation
- Malta Chamber of Pharmacists
- Malta Chamber of Psychologists
- Malta Chamber of Scientists
- Malta Chiropractic Association
- Malta Confederation of Women's Organisations
- Malta Dental Technologists Association
- Malta Developers Association
- Malta Exercise Health and Fitness Association
- Malta Federation of Organisations for Persons with Disability
- Malta Federation of Professional Associations
- Malta Food Bank Foundation
- Malta Football Association
- Malta Football Players Association
- Malta Gay Rights Movement
- Malta Girl Guides Association
- Malta Health Network
- Malta Historical Society
- Malta Hospice Movement
- Malta Hotels and Restaurants Association
- Malta Institute of Accountants

- Malta Institute of Management
- Malta Institute of Professional Photography
- Malta Interior Design Association
- Malta Karate Federation
- Malta Library and Information Association
- Malta Maritime Law Association
- Malta Memorial District Nursing Association
- Malta Midwives' Association
- Malta Model Aircraft Flying Association
- Malta Motorsport Federation
- Malta Organic Agriculture Movement
- Malta Personal and Social Development Association
- Malta Photographic Society
- Malta Police Association
- Malta Psychological Association
- Malta Sail Training Association
- Malta Society of the Blind
- Malta Tourism Society
- Malta UNESCO Youth Association
- Malta Union of Bank Employees
- Malta Union of Midwives and Nurses
- Malta Union of Professional Psychologists
- Malta Union of Teachers
- Malta Veterinary Association
- Malta Vocational Centre
- Malta Youth in Agriculture Foundation
- Maltese Association of Social Workers
- Maltese Association of Youth Workers
- Maltese Islands Agri Federation
- Maltese Psychological Association
- Maltin fil-Belgju
- Mdina Knights FC
- Medical Association of Malta
- Mediterranean Institute of Innovation, Communications and Technology
- Mental Health Association Gozo
- Mental Health Association Malta
- Migrant Offshore Aid Station
- Migrants' Network for Equality
- Missio Malta
- Moroccan Community in Malta
- Moviment Madonna tal-Konsagrazzjoni
- Mtarfa Drama Group
- Munxar Falcons F.C.
- National Association of Pensioners
- National Cat Society
- National Council of Women
- National Foster Care Association, Malta
- Nature Trust
- No Pain Foundation
- OASI Foundation
- Original Malta
- Partit Laburista
- Partit Nazzjonalista
- Passi & Beyond
- Paulo Freire Institute
- Pembroke Athleta Athletics and Triathlon
- Pembroke Athleta Sports Club

- Pharos
- Philosophy Sharing Malta
- Platform of Human Rights Organisations
- Pope John XXIII Peace Laboratory
- PRISMS
- Rehabilitation in Society
- Relationships are Forever Foundation
- Richmond Foundation
- Ronald McDonald House Charities Foundation Malta
- Science Students' Society
- Serbian Information and Culture Centre "Euro-Serbia Malta"
- Sharon Sapienza Foundation
- Society of Medical Radiographers
- Soċjeta' Filarmonika La Vittoria
- Soċjeta' Filarmonika Pinto Banda San Sebastjan A.D. 1862
- Soċjeta' Filarmonika Mnarja
- Soċjeta' Filarmonika San Bartilmew
- Soċjeta' Filarmonika Santa Marija
- Soċjeta' Mużikali San Lawrenz, Belt Vittoriosa
- Solidarjetà u Koperazzjoni
- Soroptimist International of Malta
- SOS Malta
- South Europe Youth Forum Malta
- Special Olympics Malta
- St Jeanne Antide Foundation
- St John Rescue Corps
- Studenti Demokristjani Maltin
- Sustainable Built Environment Malta
- Swieqi United Football Club
- Teatru Salesjan
- Terra Di Mezzo (TDM) 2000 – Malta
- TerraFirma Collective
- Tgħanniqa
- The English Speaking Union
- The People for Change Foundation
- The Scout Association of Malta
- The Storm Petrel Foundation
- UĦM Voice of the Workers
- Vittoriosa Historical and Cultural Society
- Why Not?
- Wirt Għawdex
- Wirt iż-Żejtun
- Women's Federation for World Peace Malta
- Write Deal Association
- Young and Free Malta
- Youth for the Environment
- Żebbuġ Heritage Foundation
- Żminijietna – Leħen ix-Xellug

Organisations represented in the MEUSAC Core Group

The Government
The Public Service
Parliament

The Labour Party
The Nationalist Party
The Confederation of Malta Trade Unions
The Forum Unions Maltin
The General Retailers and Traders Union
The General Workers' Union
The Malta Chamber of Commerce, Enterprise and Industry
The Malta Employers' Association
The Malta Hotels & Restaurant Association
The UĦM Voice of the Workers
The Malta Council for Economic and Social Development
The Gozo Regional Committee
The Maltese delegation to the European Economic and Social Committee
Representatives elected by civil society organisations
The Maltese delegation to the Committee of the Regions